

## **FREQUENTLY ASKED QUESTIONS**

### **Is my not-for-profit required to file financial reports to the Department of State?**

Article 7-A of the Executive Law requires certain charitable organizations to file financial reports with the Department of State. Executive Law Sections 172-b, 172-e and 172-f provide the filing requirements for Annual Financial Reports, Funding Disclosure Reports and Financial Disclosure Reports, respectively.

### **What types of financial reports are required to be filed with the Department of State and which entities must file those reports?**

There are three different reports the Department of State must accept for filing.

#### **Funding Disclosure Reports**

Under Executive Law Section 172-e, certain “covered entities” (organizations that have received tax exemption pursuant to Section 501(c)(3) of the Internal Revenue Code (“IRC”) are required to file funding disclosure reports with the Department of State. These reports identify the financial support an IRC Section 501(c)(3) tax exempt organization has given to an IRC Section 501(c)(4) tax exempt organization. Only those IRC Section 501(c)(3) tax exempt organizations that have made an in-kind donation greater than \$10,000 during a reporting period are required to file this report. Executive Law Section 93-a requires the Department of State to publish these reports, subject to certain restrictions, whenever the in-kind donation is inconsistent with the filer’s charitable purposes.

#### **Financial Disclosure Reports**

Under Executive Law Section 172-f, certain “covered entities” (organizations that have received tax exemption pursuant to IRC Section 501(c)(4)) are required to file financial disclosure reports with the Department of State. These reports identify a 501(c)(4) organization’s issue-based advocacy spending (“covered communications”). Only those IRC Section 501(c)(4) organizations that have made expenditures on covered communications in an aggregate amount or fair market value exceeding ten thousand dollars in a calendar year are required to file a financial disclosure report with the Department. This law also requires the Department of State to publish these reports, subject to certain restrictions, whenever the spending on covered communications is inconsistent with the filer’s charitable purposes.

#### **Annual Financial Reports**

If an organization is required to file a Funding Disclosure Report or a Financial Disclosure Report, it must also file an Annual Financial Report (or reports) encompassing the period for which the Financial or Funding Disclosure Report was made with the Department of State, along with all required forms and attachments.

## **Is an Internal Revenue Service Form 990 Schedule B Form 990 required to be filed with a Funding Disclosure or Financial Disclosure Report?**

### **Funding Disclosure Reports**

If a covered entity makes qualifying donations pursuant to subdivision two of Executive Law Section 172-e, that entity shall file with the Department of State a complete Internal Revenue Service Form 990 Schedule B, regardless of whether such form is submitted or required to be submitted to the Internal Revenue Service.

### **Financial Disclosure Reports**

If a covered entity makes qualifying expenditures for covered communications pursuant to subdivision two of Executive Law Section 172-f, the entity shall file with Department of State a complete Internal Revenue Service Form 990 Schedule B, regardless of whether such form is submitted or required to be submitted to the Internal Revenue Service.

## **How do I file a financial report?**

All financial reports should be submitted to the Department of State through the Charitable Organization Financial Reporting System. Filers will need a NY.Gov account.

- [File a financial report](#) for a charitable organization with an existing NY.Gov ID
- Link to create a new ny.gov id (Business Account): <https://my.ny.gov/>
- For access issues: "Call ITS: 844-891-1786, Email ITS: [fixit@its.ny.gov](mailto:fixit@its.ny.gov)"

## **Is there a fee to file a financial report?**

The fee for filing a financial report with the Department of State is \$25.

## **When and how often do I need to file financial reports with the Department of State?**

### **Funding and Financial Disclosure Reports**

The Funding Disclosure Reports and Financial Disclosure Reports must be filed with the Department of State within 30 days of the close of a reporting period. "Reporting period" means the six-month period within a calendar year starting January 1st and ending June 30 or the six-month period within a calendar year starting July 1 and ending December 31.

For example:

- An IRC Section 501(c)(3) organization is required to file a Funding Disclosure Report before January 31 whenever that entity made an in-kind donation greater than \$10,000 to an IRC Section 501(c)(4) organization between July 1 and December 31 of the previous calendar year.

- An IRC Section 501(c)(3) organization is required to file a Funding Disclosure Report before July 31 whenever that entity made an in-kind donation greater than \$10,000 to an IRC Section 501(c)(4) organization between January 1 and June 30 of the current calendar year.
- An IRC Section 501(c)(4) organization is required to file a Financial Disclosure Report before January 31 whenever that entity spent more than \$10,000 on covered communications after July 1 of the preceding calendar year.
- An IRC Section 501(c)(4) organization is required to file a Financial Disclosure Report before July 31 whenever that entity spent more than \$10,000 on covered communications before June 30 of the current calendar year.

### **Will the information in a financial report be available to the public or will it be kept confidential?**

#### **Funding Disclosure Reports**

If the funding or financial activity described in a covered entity's Funding Disclosure Report is inconsistent with the charitable purposes of the entity, the report will be published on the Department of State's website. The Department may determine to not publish all or a portion of in-kind donations to the covered entity and/or financial assistance provided by any covered entity to one or more recipient entities if, based upon a review of the relevant facts presented by the covered entity, such disclosure may cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation. The covered entity may appeal the Department's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the Department of State. The total amount of in-kind donations to the covered entity and financial assistance provided by any covered entity to one or more recipient entities that are the subject of such appeal shall not be made public pending final judgment on appeal. A report so published shall not include the names and addresses of individual donors to covered entities nor shall those materials include the covered entity's Internal Revenue Service Form 990 Schedule B.

#### **Financial Disclosure Reports**

If the funding or financial activity described in a covered entity's financial disclosure report is inconsistent with the charitable purposes of the entity, the report will be published on the Department of State's website. The published materials shall not include the names and addresses of individual donors to covered entities, nor shall they include the covered entity's Internal Revenue Service Form 990 Schedule B. The published report shall not be made public pursuant to Executive Law Section 172-f if, based upon a review of the relevant facts presented by the covered entity, such disclosure may cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation. The covered entity may appeal the Department's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the Department of State, pursuant to regulations promulgated by the Department of State. The reports subject to disclosure that are the subject of such appeal shall not be made public pending final judgment on the appeal. A report so published shall not include the names and addresses of individual donors to covered entities nor shall those materials include the covered entity's Internal Revenue Service Form 990 Schedule B.

### Annual Financial Reports

Executive Law Section 93-a provides that whenever the Secretary of State, in consultation with the Department of Taxation and Finance or the Department of Law, determines that the nature and extent of a covered entity's in-kind support to other entities or the nature and extent of a covered entity's spending on covered communications is inconsistent with the charitable purposes of such covered entity, the Secretary shall publish the financial reports, including Annual Financial Reports, filed by such covered entity pursuant to Article 7-A of the Executive Law, on the Department of State's website. However, any materials so published shall not include the names and addresses of individual donors to covered entities nor shall those materials include the covered entity's Internal Revenue Service Form 990 Schedule B.

### **What other information may be made available to the public by the Department of State?**

The Secretary of State is required to report to the Governor, the Temporary President of the Senate and the Speaker of the Assembly, by December 31, 2022, and annually thereafter, on topics including but not limited to: the nature and extent of in-kind support provided by covered entities to recipient entities, as such terms are defined by law, and the nature and extent of expenditures for covered communications. Pursuant to Executive Law 93-a, such reports shall not include the names and addresses of individual donors to covered entities, the covered entity's Internal Revenue Service Form 990 Schedule B, or any other information provided with the report required by regulation but not subject to public inspection or disclosure